IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.MC.No. 3160 of 2007()

CP.48/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ADOOR

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PETITIONER: ACCUSED NO.9

KRISHNAPRABHAM, S/O. RAVEENDRANATHA PANICKER, KARTHIKA HOUSE, PERUMBULICKAL MURI, PANDALAM THEKKEKARA VILLAGE, NOW RESIDING AT KAUSTHUBHAM HOUSE, SANTHIPURAM P.O., CHANGANACHERRY.

BY ADV. SRI.M.P.MADHAVANKUTTY

RESPONDENTS: DEFACTO COMPLAINANT & STATE

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1. SHYAM KUMAR, S/O. BALAN NAIR, MATTAPPALLIL HOUSE, VADAKKEKARA MURI, ANGADICKAL VILLAGE, ADOOR.

2. SUB INSPECTOR OF POLICE, PANDALAM POLICE STATION, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.DILIP MOHAN
R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3160 of 2007

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Dated this the 18th day of October, 2007

O R D E R

The petitioner is the 9th accused. He faces allegations for offences punishable, inter alia, under Section 308 r/w. 149 I.P.C. Investigation is now complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Committal proceedings have been registered. The petitioner has received summons to appear before the learned Magistrate.

2. According to the petitioner he is absolutely innocent. The petitioner was not arrested at any stage of the proceedings. The petitioner has now received summons from the Court. The incident took place when the petitioner was in the college. He has now joined the noble profession of law. He apprehends that if he surrenders before the learned Magistrate, the learned Magistrate may not consider his application for bail on merits, in accordance with law and expeditiously. He further apprehends that because of the fact that the offence is triable by a Court of Sessions, the learned Magistrate may remand him to custody.

3. I find absolutely no merit in the apprehension aired by the learned counsel for the petitioner. The petitioner faces allegations only under Section 308 I.P.C. The jurisdiction/responsibility of the Magistrate to consider a bail application under Section 437 Cr.P.C. does not vanish merely because the offence is triable by a Court of Sessions. The learned Magistrate is bound to consider the application on merits, in accordance with law and expeditiously.

4. The learned counsel for the petitioner further submits that in this case the petitioner and the only injured have settled the disputes and the offence has been compounded by the victim. The victim is represented by a counsel also before this Court. At any rate, directions under Section 438 Cr.P.C. may be issued in favour of the petitioner, it is further prayed.

5. I find it absolutely unnecessary to issue any direction under Section 438 Cr.P.C. The petitioner can appear before the learned Magistrate and claim regular bail. I must also assume that the learned Magistrate has applied his mind and exercised the discretion under Section 204 Cr.P.C. alertly and has chosen to issue only a summons and not a warrant. After having issued a summons to a person, it appears to be unjust to refuse bail to him as he is induced to believe that his appearance is in

respect of a summons issued. I have no hesitation to agree in the facts of this case that the learned Magistrate must grant regular bail to the petitioner when he appears, notwithstanding the fact that the offence is triable exclusively by a court of Sessions.

6. This Crl.M.C. is accordingly dismissed.

7. Hand over the order.

(R. BASANT)
Judge

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